

**BOARD OF PERSONNEL APPEALS**  
**MINUTES – DECEMBER 16, 2010 MEETING**

**PRESENT:**

Jack Holstrom, Presiding Officer  
Karla Stanton – by telephone

Jay Reardon – by telephone  
Steve Johnson – by telephone

**STAFF ATTENDING:**

Marieke Beck, Board Attorney  
Tonya McCormack

Ron Stormer  
John Andrew

**BOARD BUSINESS**

**APPROVAL OF MINUTES:**

Minutes for September 24, 2010 meeting were not approved. Members in attendance today were not members in attendance for September's meeting.

**NEXT MEETING DATE:**

The next meeting is scheduled for January 20, 2011. There will be a Unit Determination coming before the Board, Operating Engineers and Granite County. Alternate Presiding Officer Alan Joscelyn will be presiding over the case.

**PUBLIC COMMENT (HOUSE BILL 94):**

No comments were made.

**ATTORNEY COMMENTS – BOARD ATTORNEY MARIEKE BECK:**

Board Attorney Marieke Beck gave an update on the Brad Wilson case against Park County. Mr. Wilson has appealed the Board's decision and she will be actively participating for the Board.

The Rules Project that the Board approved of is now in effect as of December 10<sup>th</sup>. The replacement pages should be filed with the Secretary of State by December 30<sup>th</sup>. As for the decertification and staying of a ULP investigation for arbitration this was not included in that package. Board Attorney Marieke has drafted some language in regards to these two rules.

The decertification language has included Member Reardon's concerns from the prior discussion. In Board Attorney Marieke's proposed rules she has given two scenarios for language. It was agreed to include the language with the asterisk on page 2 and nix the language that was written on the top of page 3. Member Johnson also posed the question as to whether or not the expiration of the contract window period would be nullified by an agreement between the parties to roll the contract over for some further period of time. Is there any case law in regards to this? With the stipulation it would take the main members out for filing the petition for decertification. Marieke was made aware that it was the employees that file for the decertification and not the employer or union. If the parties agree to an extension then that window period would open again.

Board Agent John Andrew believes there was a case in which a decertification was filed but it was denied at the staff level since there was an agreement in place to roll the contract. He believes it may be a case that MPEA had and the Board went in the direction of what the NLRB did. Quint Nyman may know. In that case the Board denied the decertification since the contract rolled. This may be seen in more of a school setting since they need to file for a decertification in January.

Marieke's language is clear about not being able to extend past the year time frame. Marieke suggested new language in regards to the extension of agreement. The parties cannot agree to extend the terminal date of the collective bargaining agreement for more than one year past the terminal date of the existing bargaining agreement without opening the 30 day window. If there is a

letter of agreement in place, it needs to be in written form and date specific. If no one opens the contract then it is assumed in language that the contract will roll from year to year. If the parties cannot come to an agreement or impasse then the parties need to give a 10 day notice or two week notice.

Member Johnson also questioned on whether the word expiration needs to be used instead of the term termination. Marieke stated that the word would be changed throughout the rules and she will look into how many times it appears. It may be possible to define expiration to mean termination.

More research was requested to err on the side of caution. Need to look at the case Board Agent John Andrew mentioned and send copies of the case to the Board Members. Also to take a second look at the language on page 3 and Marieke will do more research on the Board Member Steve Johnson's question in regards to the nullification.

Member Reardon motioned to have the decertification rule tabled until further research is done. Member Johnson seconded the motion. Motion passed 4-0.

Marieke then went over the rule for Staying a ULP for Arbitration. This rule would allow the Board Agent to put the investigation on hold if the ULP would better be decided by arbitration. Arbitration may resolve the underlying issue. The Board Agent would need to defer to the arbitration clause in the collective bargaining agreement to see if it does come before the Board. Arbitration is expensive for the parties and we may have to look at the rule again in a few years. With regard to subsection 3, Marieke may be pulling the language from the 'no merit' language. It would give the Board discretion to give interested parties a chance to respond. There needs to be a definition of who is considered an interested party. Board Agent Andrew gave an example of an interested party. If the ULP filed is in regards to a duty of fair representation, then the employer may be an interested party. They are the root of the bargaining agreement and the ULP in this case would only be the employee and the union. Marieke also stated that in subsection 2, once a stay is issued then the parties have 10 days to file with the Board to lift the stay. There is a possibility of receiving acquired evidence after the stay has been issued. The Board would need to look at the case Collyer vs. Spielberg. The Board Agent would have the authority to dissolve the stay. There would not be appeal rights issued with the decision to lift the stay since we would be conducting the investigation. Marieke will do some more work and clarify subsection 4 and put the timeframes in for subsection 2. Due to the internal workings of BOPA subsection part 6 is not needed.

Member Johnson motioned to have the rule of Staying a ULP for Arbitration tabled for more work and cleanup. Board Member Stanton seconded the motion. Motion passed 3-0. Member Reardon had to leave the meeting due to another meeting that he had scheduled.

#### **MISCELLANEOUS:**

Tonya McCormack stated that House Bill 57 will be introduced as legislation. This will allow for service of subpoenas, etc to be deposited by US Mail.

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